IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2373 OF 2006

Banoobai F. Kalwadwala & Ors. ... Petitioners

V/s.

Maharashtra Housing & Area Development Authority & Ors. ... Respondents

Mr.M.M.Vashi i/b.M.P.Vashi & Assoc.for petitioners
Mr.P.G.Sawant, AGP for respondent No. 1.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED : 27th November, 2006

P.C.

. The petitioners, claiming to be the owners of 3 chawls situated on the plot of land bearing C.S. No. 4, Lower Parel Division, have challenged notice/ Government Notification dated 24.07.2006/03.08.2006 issued by the Special Land Acquisition Officer, Maharashtra Housing and Area Development Authority, Mumbai, under Section 93 of Maharashtra Housing and Area Development Act, 1976 (for short "MHADA Act") and order of the Collector dated 30th September, 2006 under Section 93 Sub-Section (6) of the MHADA Act, whereby, the petitioners were directed to hand-over possession of the property on 07.10.2006. Therefore, the present petition dated 6th October, 2006.

2. The respondents, based on the said notices, on

07.10.2006 took an ex-parte possession, in presence of tenants/occupants, of the property in question by following the due procedure of law and drew the panchanama and the possession receipt accordingly. Therefore, though the petitioner moved in vacation for an urgent order on 01.11.2006, by that time, the respondents had already taken possession on 07.10.2006 itself as referred to above. In the result, the respondents have executed the said notices/orders.

3. By an affidavit dated 16th November, 2006, the respondents have resisted the contentions and the claims of the petitioners.

4. The acquisition proceedings in question were initiated after due notice dated 11.12.2002 under Section 88(3) of the MHADA Act. The petitioners, though served, did not raise any claim to develop the property by their own sources. There were no bonafide steps taken to show their intention to provide facilities to the tenants/occupants, at the relevant time. It appears that one way or other, the petitioners were avoiding to repair the said dilapidated building. The petitioners had resisted, the certificate, referred under Section 88(3) of the

MHADA Act. The petitioners though aware of the said proceedings, since 2002 never took any steps to show their bonafide and to get the said certificate and action set aside within the reasonable time.

5. In this background the Mumbai Building Repairs & Reconstruction Board - respondent No. 7 submitted a proposal for acquisition in respect of the land and building, under the provision of Section 93(1) of the MHADA Act. The notice regarding acquisition proposal was published in the Government Gazette dated 24.07.2006/03.08.2006. The respondents have taken all necessary steps and acquired the property, after following due procedure of law. There is no justification what-so-ever coming from the petitioner for expressing such intention again to develop the property at this late stage.

6. As averred, by the respondents through affidavit dated 16th November, 2006, the whole action of the respondents is based on the information, material and an opinion of MHADA Authority, that resulted into passing an order of acquisition of property in question, after hearing the tenants, land lord and all the concerned parties. The petitioners

did not raise any claim about the development of the property at the relevant time and almost all the tenants/occupants of the said property, have consented for the reconstruction from MHADA Authority even during the hearing conducted by the S.L.A.O. We, therefore, find that no case has been made out by the petitioners, to interfere with the impugned orders, on any ground including breach of principles of natural justice, in view of the above facts and circumstances.

7. Taking all these into account, the petition is dismissed. Consequently the status quo order also stands vacated. No costs.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]